

AMENDED IN ASSEMBLY AUGUST 22, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 274**

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**Introduced by Senator Leno  
(Coauthor: Senator Beall)**

February 14, 2013

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An act to amend Sections 3040, 4057, 7601, 7612, and 8617 of, and to add Section 4052.5 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 274, as amended, Leno. Family law: parentage: child custody and support.

(1) Under existing law, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother, except as specified. Existing law also provides that if a man signs a voluntary declaration of paternity, it has the force and effect of a judgment of paternity, subject to certain exceptions. Existing law further provides that a man is rebuttably presumed to be the father if he was married to, or attempted to marry, the mother before or after the birth of the child, or he receives the child as his own and openly holds the child out as his own. Under existing law, the latter presumptions are rebutted by a judgment establishing paternity by another man.

This bill would authorize a court to find that more than 2 persons with a claim to parentage, as specified, are parents if the court finds that recognizing only 2 parents would be detrimental to the child. The bill would direct the court, in making this determination, to consider all relevant factors, including, but not limited to, the harm of removing

the child from a stable placement with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time.

(2) The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, including the mother and child relationship and the father and child relationship, and governs proceedings to establish that relationship.

This bill would provide that a child may have a parent and child relationship with more than 2 parents. The bill would require any reference to 2 parents to be interpreted to apply to all of a child's parents where a child is found to have more than 2 parents, as specified.

(3) Existing law requires a family court to determine the best interest of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, existing law requires the court to consider specified factors, including the health, safety, and welfare of the child. Existing law establishes an order of preference for allocating child custody and directs the court to choose a parenting plan that is in the child's best interest.

This bill would, in the case of a child with more than 2 parents, require the court to allocate custody and visitation among the parents based on the best interest of the child, as specified.

(4) Under existing law, the parents of a minor child are responsible for supporting the child. Existing law establishes the statewide uniform guideline for calculating court-ordered child support, which is rebuttably presumed to be the correct amount of child support. Existing law provides that the presumption may be rebutted by admissible evidence showing that application of the uniform guideline would be unjust or inappropriate because of one or more factors found to be applicable and the court provides certain information in writing, as specified.

This bill would direct the court to apply the statewide uniform guideline in a case where a child has more than 2 parents by dividing the child support obligations among the parents based on the income of each of the parents and the amount of time spent with the child by each parent. The bill would require the court to divide child support obligations among the parents in a just and appropriate manner, as specified, if the court finds that applying the statewide uniform guideline

to a child with more than 2 parents would be unjust and inappropriate, as specified.

(5) Under existing law, the birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.

This bill would provide that the termination of the parental duties and responsibility of the parent or parents may be waived ~~by agreement of~~ *if both* the parent or parents and the prospective adoptive parent *or* parents sign a waiver at any time prior to the finalization of the adoption.

(6) *This bill would incorporate additional changes in Sections 7601 and 7612 of the Family Code, proposed by AB 1403, to be operative only if AB 1403 and this bill are both chaptered and become effective January 1, 2014, and this bill is chaptered last.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Most children have two parents, but in rare cases, children  
4 have more than two people who are that child's parent in every  
5 way. Separating a child from a parent has a devastating  
6 psychological and emotional impact on the child, and courts must  
7 have the power to protect children from this harm.

8 (b) The purpose of this bill is to abrogate *In re M.C. (2011) 195*  
9 *Cal.App.4th 197* insofar as it held that where there are more than  
10 two people who have a claim to parentage under the Uniform  
11 Parentage Act, courts are prohibited from recognizing more than  
12 two of these people as the parents of a child, regardless of the  
13 circumstances.

14 (c) This bill does not change any of the requirements for  
15 establishing a claim to parentage under the Uniform Parentage  
16 Act. It only clarifies that where more than two people have claims  
17 to parentage, the court may, if it would otherwise be detrimental  
18 to the child, recognize that the child has more than two parents.

19 (d) It is the intent of the Legislature that this bill will only apply  
20 in the rare case where a child truly has more than two parents, and  
21 a finding that a child has more than two parents is necessary to

1 protect the child from the detriment of being separated from one  
2 of his or her parents.

3 SEC. 2. Section 3040 of the Family Code is amended to read:

4 3040. (a) Custody should be granted in the following order of  
5 preference according to the best interest of the child as provided  
6 in Sections 3011 and 3020:

7 (1) To both parents jointly pursuant to Chapter 4 (commencing  
8 with Section 3080) or to either parent. In making an order granting  
9 custody to either parent, the court shall consider, among other  
10 factors, which parent is more likely to allow the child frequent and  
11 continuing contact with the noncustodial parent, consistent with  
12 Sections 3011 and 3020, and shall not prefer a parent as custodian  
13 because of ~~the gender of that parent~~ *that parent's sex*. The court,  
14 in its discretion, may require the parents to submit to the court a  
15 plan for the implementation of the custody order.

16 (2) If to neither parent, to the person or persons in whose home  
17 the child has been living in a wholesome and stable environment.

18 (3) To any other person or persons deemed by the court to be  
19 suitable and able to provide adequate and proper care and guidance  
20 for the child.

21 (b) The immigration status of a parent, legal guardian, or relative  
22 shall not disqualify the parent, legal guardian, or relative from  
23 receiving custody under subdivision (a).

24 (c) This section establishes neither a preference nor a  
25 presumption for or against joint legal custody, joint physical  
26 custody, or sole custody, but allows the court and the family the  
27 widest discretion to choose a parenting plan that is in the best  
28 interest of the child.

29 (d) In cases where a child has more than two parents, the court  
30 shall allocate custody and visitation among the parents based on  
31 the best interest of the child, including, but not limited to,  
32 addressing the child's need for continuity and stability by  
33 preserving established patterns of care and emotional bonds. The  
34 court may order that not all parents share legal or physical custody  
35 of the child if the court finds that it would not be in the best interest  
36 of the child as provided in Sections 3011 and 3020.

37 SEC. 3. Section 4052.5 is added to the Family Code, to read:

38 4052.5. (a) The statewide uniform guideline, as required by  
39 federal regulations, shall apply in any case in which a child has  
40 more than two parents. The court shall apply the guideline by

1 dividing child support obligations among the parents based on  
2 income and amount of time spent with the child by each parent,  
3 pursuant to Section 4053.

4 (b) Consistent with federal regulations, after calculating the  
5 amount of support owed by each parent under the guideline, the  
6 presumption that the guideline amount of support is correct may  
7 be rebutted if the court finds that the application of the guideline  
8 in that case would be unjust or inappropriate due to special  
9 circumstances, pursuant to Section 4057. If the court makes that  
10 finding, the court shall divide child support obligations among the  
11 parents in a manner that is just and appropriate based on income  
12 and amount of time spent with the child by each parent, applying  
13 the principles set forth in Section 4053 and this article.

14 (c) Nothing in this section shall be construed to require  
15 reprogramming of the California Child Support Automation  
16 System, established pursuant to Chapter 4 (commencing with  
17 Section 10080) of Part 1 of Division 9 of the Welfare and  
18 Institutions Code, a change to the statewide uniform guideline for  
19 determining child support set forth in Section 4055, or a revision  
20 by the Department of Child Support Services of its regulations,  
21 policies, procedures, forms, or training materials.

22 SEC. 4. Section 4057 of the Family Code is amended to read:  
23 4057. (a) The amount of child support established by the  
24 formula provided in subdivision (a) of Section 4055 is presumed  
25 to be the correct amount of child support to be ordered.

26 (b) The presumption of subdivision (a) is a rebuttable  
27 presumption affecting the burden of proof and may be rebutted by  
28 admissible evidence showing that application of the formula would  
29 be unjust or inappropriate in the particular case, consistent with  
30 the principles set forth in Section 4053, because one or more of  
31 the following factors is found to be applicable by a preponderance  
32 of the evidence, and the court states in writing or on the record the  
33 information required in subdivision (a) of Section 4056:

34 (1) The parties have stipulated to a different amount of child  
35 support under subdivision (a) of Section 4065.

36 (2) The sale of the family residence is deferred pursuant to  
37 Chapter 8 (commencing with Section 3800) of Part 1 and the rental  
38 value of the family residence where the children reside exceeds  
39 the mortgage payments, homeowner's insurance, and property

1 taxes. The amount of any adjustment pursuant to this paragraph  
2 shall not be greater than the excess amount.

3 (3) The parent being ordered to pay child support has an  
4 extraordinarily high income and the amount determined under the  
5 formula would exceed the needs of the children.

6 (4) A party is not contributing to the needs of the children at a  
7 level commensurate with that party's custodial time.

8 (5) Application of the formula would be unjust or inappropriate  
9 due to special circumstances in the particular case. These special  
10 circumstances include, but are not limited to, the following:

11 (A) Cases in which the parents have different time-sharing  
12 arrangements for different children.

13 (B) Cases in which both parents have substantially equal  
14 time-sharing of the children and one parent has a much lower or  
15 higher percentage of income used for housing than the other parent.

16 (C) Cases in which the children have special medical or other  
17 needs that could require child support that would be greater than  
18 the formula amount.

19 (D) Cases in which a child is found to have more than two  
20 parents.

21 SEC. 5. Section 7601 of the Family Code is amended to read:

22 7601. (a) "Parent and child relationship" as used in this part  
23 means the legal relationship existing between a child and the child's  
24 natural or adoptive parents incident to which the law confers or  
25 imposes rights, privileges, duties, and obligations. The term  
26 includes the mother and child relationship and the father and child  
27 relationship.

28 (b) This part does not preclude a finding that a child has a parent  
29 and child relationship with more than two parents.

30 (c) For purposes of state law, administrative regulations, court  
31 rules, government policies, common law, and any other provision  
32 or source of law governing the rights, protections, benefits,  
33 responsibilities, obligations, and duties of parents, any reference  
34 to two parents shall be interpreted to apply to every parent of a  
35 child where that child has been found to have more than two  
36 parents under this part.

37 SEC. 5.5. Section 7601 of the Family Code is amended to read:

38 7601. (a) "Natural parent" as used in this code means a  
39 nonadoptive parent established under this part, whether  
40 biologically related to the child or not.

1 (b) “Parent and child relationship” as used in this part means  
2 the legal relationship existing between a child and the child’s  
3 natural or adoptive parents incident to which the law confers or  
4 imposes rights, privileges, duties, and obligations. The term  
5 includes the mother and child relationship and the father and child  
6 relationship.

7 (c) *This part does not preclude a finding that a child has a*  
8 *parent and child relationship with more than two parents.*

9 (d) *For purposes of state law, administrative regulations, court*  
10 *rules, government policies, common law, and any other provision*  
11 *or source of law governing the rights, protections, benefits,*  
12 *responsibilities, obligations, and duties of parents, any reference*  
13 *to two parents shall be interpreted to apply to every parent of a*  
14 *child where that child has been found to have more than two*  
15 *parents under this part.*

16 SEC. 6. Section 7612 of the Family Code is amended to read:

17 7612. (a) Except as provided in Chapter 1 (commencing with  
18 Section 7540) and Chapter 3 (commencing with Section 7570) of  
19 Part 2 or in Section 20102, a presumption under Section 7611 is  
20 a rebuttable presumption affecting the burden of proof and may  
21 be rebutted in an appropriate action only by clear and convincing  
22 evidence.

23 (b) If two or more presumptions arise under Section 7610 or  
24 7611 that conflict with each other, or if a presumption under  
25 Section 7611 conflicts with a claim pursuant to Section 7610, the  
26 presumption which on the facts is founded on the weightier  
27 considerations of policy and logic controls.

28 (c) In an appropriate action, a court may find that more than  
29 two persons with a claim to parentage under this division are  
30 parents if the court finds that recognizing only two parents would  
31 be detrimental to the child. In determining detriment to the child,  
32 the court shall consider all relevant factors, including, but not  
33 limited to, the harm of removing the child from a stable placement  
34 with a parent who has fulfilled the child’s physical needs and the  
35 child’s psychological needs for care and affection, and who has  
36 assumed that role for a substantial period of time. A finding of  
37 detriment to the child does not require a finding of unfitness of  
38 any of the parents or persons with a claim to parentage.

39 (d) Unless a court orders otherwise after making the  
40 determination specified in subdivision (c), a presumption under

1 Section 7611 is rebutted by a judgment establishing paternity of  
2 the child by another man.

3 (e) Within two years of the execution of a voluntary declaration  
4 of paternity, a person who is presumed to be a parent under Section  
5 7611 may file a petition pursuant to Section 7630 to set aside a  
6 voluntary declaration of paternity. The court's ruling on the petition  
7 to set aside the voluntary declaration of paternity shall be made  
8 taking into account the validity of the voluntary declaration of  
9 paternity, and the best interests of the child based upon the court's  
10 consideration of the factors set forth in subdivision (b) of Section  
11 7575, as well as the best interests of the child based upon the  
12 nature, duration, and quality of the petitioning party's relationship  
13 with the child and the benefit or detriment to the child of continuing  
14 that relationship. In the event of any conflict between the  
15 presumption under Section 7611 and the voluntary declaration of  
16 paternity, the weightier considerations of policy and logic shall  
17 control.

18 (f) A voluntary declaration of paternity is invalid if, at the time  
19 the declaration was signed, any of the following conditions exist:

20 (1) The child already had a presumed parent under Section 7540.

21 (2) The child already had a presumed parent under subdivision  
22 (a), (b), or (c) of Section 7611.

23 (3) The man signing the declaration is a sperm donor, consistent  
24 with subdivision (b) of Section 7613.

25 *SEC. 6.5. Section 7612 of the Family Code is amended to read:*

26 7612. (a) Except as provided in Chapter 1 (commencing with  
27 Section 7540) and Chapter 3 (commencing with Section 7570) of  
28 Part 2 or in Section 20102, a presumption under Section 7611 is  
29 a rebuttable presumption affecting the burden of proof and may  
30 be rebutted in an appropriate action only by clear and convincing  
31 evidence.

32 (b) If two or more presumptions arise under Section 7610 or  
33 7611 that conflict with each other, or if a presumption under  
34 Section 7611 conflicts with a claim pursuant to Section 7610, the  
35 presumption which on the facts is founded on the weightier  
36 considerations of policy and logic controls.

37 (c) *In an appropriate action, a court may find that more than*  
38 *two persons with a claim to parentage under this division are*  
39 *parents if the court finds that recognizing only two parents would*  
40 *be detrimental to the child. In determining detriment to the child,*



1 *the court shall consider all relevant factors, including, but not*  
2 *limited to, the harm of removing the child from a stable placement*  
3 *with a parent who has fulfilled the child's physical needs and the*  
4 *child's psychological needs for care and affection, and who has*  
5 *assumed that role for a substantial period of time. A finding of*  
6 *detriment to the child does not require a finding of unfitness of*  
7 *any of the parents or persons with a claim to parentage.*

8 ~~(e) The~~

9 *(d) Unless a court orders otherwise after making the*  
10 *determination specified in subdivision (c), a presumption under*  
11 *Section 7611 is rebutted by a judgment establishing paternity*  
12 *parentage of the child by another man person.*

13 ~~(d)~~

14 *(e) Within two years of the execution of a voluntary declaration*  
15 *of paternity, a person who is presumed to be a parent under Section*  
16 *7611 may file a petition pursuant to Section 7630 to set aside a*  
17 *voluntary declaration of paternity. The court's ruling on the petition*  
18 *to set aside the voluntary declaration of paternity shall be made*  
19 *taking into account the validity of the voluntary declaration of*  
20 *paternity, and the best interests of the child based upon the court's*  
21 *consideration of the factors set forth in subdivision (b) of Section*  
22 *7575, as well as the best interests of the child based upon the*  
23 *nature, duration, and quality of the petitioning party's relationship*  
24 *with the child and the benefit or detriment to the child of continuing*  
25 *that relationship. In the event of any conflict between the*  
26 *presumption under Section 7611 and the voluntary declaration of*  
27 *paternity, the weightier considerations of policy and logic shall*  
28 *control.*

29 ~~(e)~~

30 *(f) A voluntary declaration of paternity is invalid if, at the time*  
31 *the declaration was signed, any of the following conditions exist:*

32 *(1) The child already had a presumed parent under Section 7540.*

33 *(2) The child already had a presumed parent under subdivision*  
34 *(a), (b), or (c) of Section 7611.*

35 *(3) The man signing the declaration is a sperm donor, consistent*  
36 *with subdivision (b) of Section 7613.*

37 **SEC. 7.** Section 8617 of the Family Code is amended to read:

38 **8617.** (a) Except as provided in subdivision (b), the existing  
39 parent or parents of an adopted child are, from the time of the  
40 adoption, relieved of all parental duties towards, and all

1 responsibility for, the adopted child, and have no right over the  
2 child.

3 (b) The termination of the parental duties and responsibilities  
4 of the existing parent or parents under subdivision (a) may be  
5 ~~waived by agreement of~~ *if both* the existing parent or parents and  
6 the prospective adoptive ~~parents~~ *parent or parents sign a waiver*  
7 *at any time prior to the finalization of the adoption. The waiver*  
8 *shall be filed with the court.*

9 SEC. 8. (a) *Section 5.5 of this bill incorporates amendments*  
10 *to Section 7601 of the Family Code proposed by both this bill and*  
11 *Assembly Bill 1403. It shall only become operative if (1) both bills*  
12 *are enacted and become effective on or before January 1, 2014,*  
13 *(2) each bill amends Section 7601 of the Family Code, and (3) this*  
14 *bill is enacted after Assembly Bill 1403, in which case Section 5*  
15 *of this bill shall not become operative.*

16 (b) *Section 6.5 of this bill incorporates amendments to Section*  
17 *7612 of the Family Code proposed by both this bill and Assembly*  
18 *Bill 1403. It shall only become operative if (1) both bills are*  
19 *enacted and become effective on or before January 1, 2014, (2)*  
20 *each bill amends Section 7612 of the Family Code, and (3) this*  
21 *bill is enacted after Assembly Bill 1403, in which case Section 6*  
22 *of this bill shall not become operative.*